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IN THE

Supreme Court of the United States

OCTOBER TERM 1935

No. 838.

FREDERICK L. MOREHEAD, as Warden of the City Prison of the Borough of Brooklyn,
Appellant,

vs.

PEOPLE ex rel. JOSEPH TIPALDO,
Appellee.

APPELLANT'S BRIEF ON THE LAW

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Appellee.

APPELLANT'S BRIEF ON THE LAW

Statement.

The appeal herein arises out of the granting of a certiorari to the Supreme Court of the State of New York to review the final order in a proceeding on a writ of habeas corpus (R. pp. 2-5, fols. 4-10). The said order, entered on the remittitur of the Court of Appeals (the court of last resort in New York State), sustained the writ of habeas corpus and directed the discharge of the appellee Joseph Tipaldo (R. p. 29, fols. 32, 33). The remittitur of the Court of Appeals certifies as the sole basis for its determination that Chapter 584, Laws of 1933 of New York, "contravenes the 14th Amendment of the Constitution of the United States." The controlling authority is stated to be the decision of this Court in *Adkins* v. *Children's Hospital,* 261 U. S. 525 (R. p. 18, fol. 30). Jurisdiction is had under Section 237(b) of the Judicial Code.

Facts.

Appellee Joseph Tipaldo was indicted November 2, 1934, together with three other persons, charged with forging and altering books and records of the Spotlight Laundry, for the purpose of concealing the failure to pay to female employees the minimum fair wage prescribed in a mandatory order of the Industrial Commissioner of New York State. The order was made pursuant to Article 19, Section 560 of the Labor Law of New York, contained within Chapter 584 of Laws of 1933, known as the New York Minimum Wage Law for Women and Minors. The crime charged is a misdemeanor by virtue of Section 565, subdivision 2 of said chapter.

After his arrest and before trial, Tipaldo sued out a writ of habeas corpus charging as the basis for his application that Chapter 584, Laws of 1933 of New York, contravenes the Fourteenth Amendment of the United States (R. p. 4, fol. 7). The writ was dismissed by Mr. Justice MAY at a Special Term of the Supreme Court on June 26, 1935 (R. p. 7, fol. 14). On appeal to the Court of Appeals, that Court reversed the order at Special Term, sustained the writ and discharged the prisoner Tipaldo (R. p. 18, fol. 30). The final order of the Supreme Court was entered on the remittitur of the Court of Appeals and the certiorari of this Court was issued to review that final order (fol. 35).

The Provisions of the Minimum Wage Law for Women and Minors in New York State (Ch. 584, L. 1933).[1]

Chapter 584, Laws of 1933 of New York, sets up in Article 19 of the Labor Law administrative machinery for determining and enforcing a minimum fair wage for

[1] The text of the statute is found herein as Appendix A, pp. 55-68, infra.

women and minors employed in occupations (except farm labor and domestic service).

In the first section of the Article (Sec. 550), the Legislature states its findings of underlying conditions held to make necessary and proper such an enactment. It is stated that the employment of women and minors at wages "unreasonably low and not fairly commensurate with the value of the services rendered is a matter of grave and vital public concern". The Legislature finds that many women are not as a class in a position to bargain equally with their employers and that as to them the term "freedom of contract" is illusory. Women and minors are forced to accept wages having no relation to the fair value of the services rendered; are peculiarly subject to exploitation by unscrupulous employers, resulting in a constant lowering of standards, constituting destructive unfair competition, reducing the purchasing power of the workers, and threatening the stability of industry. The Legislature determined that these conditions justified and necessitated the exercise of the State's police power.

In Section 551, subdivision 7, "an oppressive and unreasonable wage" is defined as one which is both less than the fair and reasonable value of the services rendered *and* less than sufficient to meet the minimum cost of living necessary for health. This definition is vital. It must be noted that a wage is "oppressive and unreasonable" only when it is less than each of these amounts. A wage is not "oppressive and unreasonable" when it is at least equal to either one or the other of these amounts, whichever is the smaller. It is apparent that it is only a wage lacking in both of these elements which is declared oppressive and that a wage containing either one could not be so held.

Section 552 declares it to be against public policy for any employer to employ any woman or a minor in this State at an oppressive and unreasonable wage as defined in the Article, and makes any such contract of employment void.

Under Section 553, the Industrial Commissioner or the director of the Minimum Wage Division to be set up by the Commissioner is given full power to investigate concerning wages paid to women and minors in any occupation covered by the statute.

Under Section 554, the Commissioner may, on his own initiative, or if petitioned by fifty or more residents of the State, he must cause an investigation to be made to determine whether any substantial number of women or minors in any occupation are receiving *oppressive and unreasonable wages* as defined in Section 551. If such condition is found to exist, a wage board shall be appointed to report upon the establishment of *minimum fair wage rates* for women or minors in such occupation.

If it is found that women are not receiving oppressive wages, that is, wages below *both* the fair value of their services *and* the minimum cost of maintainting health, no action may be taken. It results, therefore, that if women in a particular industry receive the fair value of their services, however far below the cost of living that may be, the Commissioner is powerless to institute any action. If, on the other hand, the Commissioner finds that the women and minors in any occupation covered by the statute are receiving wages sufficient to maintain normal health standards, he has no power to set in motion the wage fixing machinery, however far below the value of the services such wages may be. *In no event, therefore, can a wage be set which will exceed the reasonable fair value of the services rendered.*

Under this section an investigation into the laundry industry was conducted in the months of May and June, 1933, upon the basis of complaints received by the Industrial Commissioner from the New York State Laundry-owners Association and many laundry employees. The reports of this investigation indicate that a substantial number of women and minors in the laundry industry had been receiving oppressive and unreasonable wages as defined in the Act. On July 3, 1933, the Industrial Commissioner appointed a Laundry Wage Board.

Section 555 provides that a wage board shall be composed of not more than three representatives of the employers in the industry in question, an equal number of the employees in such occupation, and not more than three disinterested persons representing the public. The members are appointed by the Commissioner, two-thirds of the members constituting a quorum, and the recommendations or report of the board require a vote of not less than a majority of all its members. Such a wage board is given power to administer oaths and to issue subpoenas to obtain evidence relative to any matters under investigation (subd. 2).

Within sixty days of its organization a wage board must submit a report making recommendations as to minimum fair wage standards for women or minors in the occupation which the board was appointed to investigate (subd. 4). Subdivision 8 of Section 551 defines a fair wage as one fairly and reasonably commensurate with the value of the service or class of service rendered. The things to be considered in establishing a minimum fair wage are set forth to be (1) all relevant circumstances affecting the value of the service or class of service rendered; (2) such consideration as would guide a Court in a suit for the reasonable value of services; and (3) wages paid in the State for work of like character by employers who voluntarily maintain a minimum fair wage standard. Under subdivision 5 of Section 555, employments in any occupation may be classified according to the nature of the service rendered; the minimum fair wage set may vary with localities if the board finds that conditions make such differentiation proper. Under subdivision 6 the board may recommend a suitable scale of rates for learners and apprentices which may be less than the regular minimum set.

The Laundry Wage Board, after investigation, unanimously found that women and minors in laundries in New York State were receiving "unreasonable and oppressive wages" as defined in the Act. It found further

that competition between laundries was met by decreasing the wages of female labor (Factual Brief, pp. 61-63). The board recommended to the Commissioner that a wage scale of 31 cents per hour for the New York City territory and 27½ cents per hour in other parts of the State be adopted for the laundry industry.

Under Section 556 the wage board's report is submitted to the Commissioner who must within ten days confer with the director and accept or reject the report. In the event of rejection, the matter is resubmitted to the same or a new wage board. If accepted, it must be published, together with any proposed administrative regulations which the Commissioner and the director may deem appropriate, and notice must be given of a public hearing to be held not less than fifteen nor more than thirty days after such publ[illegible] at which all persons interested may be heard.

Notice was duly given in the laundry industry and public hearings held. *At these hearings not one representative of any laundry appeared in opposition to the basic wage recommended by the wage board or to the administrative regulations proposed. Such persons as did appear on behalf of laundry owners were all in favor of the adoption of the wage scale and the regulations recommended by the wage board.*

Under Section 557 of the Act, within ten days after the public hearing, the Commissioner must approve or disapprove the report of the wage board. If disapproved, it may be resubmitted to the same or a new wage board. If approved, the Commissioner must make a directory order defining the minimum fair wage rates in the occupation as recommended and including administrative regulations which may include rules for finding and governing learners and apprentices, piece rates or their relation to time rates, overtime or part time rates, other special conditions or circumstances, and may upon the basis of the minimum rates set make such modifications to such rates as the diversities or the complexities of the in-

dustry may require in the classes of cases enumerated in the section.

Under Section 558 licenses may be issued to a woman or minor whose earning capacity is impaired by age, physical or mental deficiency, or injury, authorizing employment at a rate less than the minimum fixed for such time and such amount as shall be fixed by the Commissioner in the license.

Under Section 559 the result of non-observance by an employer of a directory order is the publication of the fact that he has failed to observe the law. A fifteen days' hearing after notice has been provided so that he may show cause why such publication should not be made.

In this case the report of the wage board was approved by the Industrial Commissioner after the public hearing and a directory order became effective on October 2, 1933, notice of which was given to all known laundries in the State.

Section 560 provides that if at any time after a directory order has been in effect for nine months, the Commissioner is of the opinion that non-observance of such order is a threat to the maintenance of a fair minimum wage standard in the occupation, he may give notice of intention to make such order mandatory and of a public hearing to be held not less than fifteen or more than thirty days after such notice, at which all interested persons may be heard. If, after such hearing, the Commissioner still believes that non-observance of the directory order is jeopardizing wage standards, he may make such order or any part thereof mandatory and so publish it.

In the laundry industry, after the directory order had been in effect for nine months, it appeared that many employers were still continuing to pay oppressive and unreasonable wages and imperiling the standards that had been set. Accordingly, on July 2, 1934, notice of an intention to make the laundry wage mandatory and to hold public hearing thereon was published. *At the public*

hearings on the mandatory order, the recommendations of the wage board were again received with unanimous approval by all representatives of the laundry industry that appeared. After the hearings the wages of 31 cents and 27½ cents per hour were made mandatory to become effective on August 6, 1934. Copies of this mandatory order and the administrative regulations attached thereto were mailed to all known laundries in the State, together with instructions for compliance. Since the inception of this action, records of the operation of this mandatory order have become available and an analysis is included in the Factual Brief herewith (pp. 69-75). It shows that the wage fixed is not unreasonable in that the average woman's wage paid has increased to a figure substantially greater than the minimum fixed.

In Section 561 it is provided that after any minimum fair wage order, whether directory or mandatory, has been in effect for a year or more, the Commissioner may on his own motion, and must on the petition of fifty or more residents of the State, reconsider the wage rates set therein and reconvene the same or appoint a new wage board to recommend whether or not the rate or rates in the order should be modified. In such case the report of the wage board shall be dealt with in the same manner as in the case of a first investigation, except that if the order under reconsideration is mandatory in whole or in part, the Commissioner may, in making any new order or confirming the old one, have power to declare to what extent it shall be directory and to what extent mandatory.

Under Section 562 the Commissioner may at any time propose such modifications or additions to any administrative regulations included in a directory or mandatory order as he may deem appropriate to effectuate the purposes of the article, provided only that such changes or additions could legally have been included in the original order. The types of administrative regulations which the Commissioner may make to effectuate an original order are set forth in Section 557. A public hearing must be

held before any such changed or additional regulations become effective.

Section 563 provides "a right to review by the Industrial Board, and the Courts, 'from any ruling or holding on a question of law included and embodied in any decision or order of the commissioner or the director' * * * and upon such review the reasonableness of any rule or order may be challenged. Labor Law, Article 3." [1]

Section 564 requires the keeping of records by employers, that such records shall be open to inspection by the Commissioner or his representatives, and requires the posting of a copy of any minimum fair wage order by any employer subject to it in a conspicuous place in every room in which women or minors are employed.

Section 565 provides the penalty for violations of the Article. It is a misdemeanor for an employer to discharge or discriminate against any employee for serving on or testifying before a wage board or in any other investigation or proceeding related to the Article (subd. 1). Under subdivision 2 it is a misdemeanor for any employer to pay or agree to pay to any woman or minor employee less than the rates applicable to such a woman or minor employee under a directory minimum fair wage order. Under subdivision 3 it is likewise a misdemeanor to fail to keep the records required by the Article or to furnish such record to the Commissioner or his authorized representative upon request.

Section 566 gives to any female or minor worker in an occupation, to which a mandatory minimum fair wage order applies, a right to recover in a civil action the amount of such minimum wages, less any amount actually paid by the employer, and an agreement to work for less than the rate set is no defense to the action. Upon the request of any such employee, the Commissioner may take an assignment of such wage claim in trust for the

[1] Opinion by LEHMAN, J., *People ex rel. Tifaldo* v. *Morehead*, 270 N. Y. 233 at pp. 255, 256; *Helfrick* v. *Dahlstrom Metal Door Co.*, 284 U. S. 594; *Glatzl* v. *Stumpp*, 220 N. Y. 71. Sections 111 and 112 of Article 3 of the New York Labor Law deal with the method of review.

employee and may bring any legal action necessary to collect such claim.

Discussion of Opinion of Court of Appeals.

The opinion of the Court is based upon the alleged controlling force of the decision of this Court in *Adkins* v. *Children's Hospital.* The remittitur of the Court of Appeals certifies that it is the Federal question, the application of the Fourteenth Amendment, which necessarily forms the basis of the decision and that the authority is the *Adkins* case (R. p. 18).

The opinion of the Court finds no "material difference between the act of Congress and this act of the New York State Legislature." This fundamental error is found in the following sentences (270 N. Y. at p. 238):

> "The act of Congress had one standard, the living wage; this State act has added another, reasonable value. *The minimum wage must include both.* What was vague before has not been made any clearer. *One of the elements, therefore, in fixing the fair wage is the very matter which was the basis of the Congressional act."* (Italics ours.)

The italicized lines carry the Court's misconception of the statute. It is a basic misconception. From it flows the erroneous conclusion of the Court of Appeals that there exists no material difference between the two statutes. It ignores the essential underlying difference in failing to appreciate the entire independence of the two concepts of an *"oppressive and unreasonable wage"* as distinguished from a minimum *"fair wage"*. It is the "oppressive" wage that is prohibited as against public policy (Sec. 552).

"An oppressive and unreasonable wage" is defined as a wage which combines two factors: It must be *both* less than the "fair and reasonable value of the services rendered" *and in addition thereto* "less than sufficient to

meet the minimum cost of living necessary for health" (Secs. 551-7).

Those two factors *do not* enter into the determination of the minimum *"fair wage"* as in the statute defined, nor as determined in this case. The only basis for evaluating and arriving at the "fair minimum wage" is the fair value of the services rendered.

The "fair wage" means a wage *"fairly and reasonably commensurate with the value of the service or class of service rendered"* (Secs. 551-8). This definition obviously *does not* contemplate the "cost of living" as a factor. The wage board may take account of: (1) relevant circumstances affecting the value of the service or class of service rendered, (2) considerations that might guide a Court in a suit for value of services, (3) wages for like work in employments where fair wage standards are maintained. These are considerations dealing *solely* with the reasonable value of the services and do not include the "cost of living" factor.

Thus, the Court of Appeals has made a fatal error in holding that the minimum wage set "must include both". The very opposite is the fact. The fair minimum wage, by its very definition and method of calculation, can never exceed the reasonable value of services rendered. Therefore, no matter how much lower than the minimum cost of health maintenance the wage may be, it is nevertheless lawful if it equal the fair value of the services. Therein, too, lies the basic difference in the two statutes. From the failure so to recognize that distinction in underlying theory and practice stems the fallacious conclusion reached by the Court of Appeals. The cases cited as following the *Adkins* decision are in no manner pertinent except insofar as they embody an issue arising out of minimum wage statutes. In every one of those cases cited by the opinion of Chief Judge CRANE, however, the statute sets up a standard identical with that of the District of Columbia statute—all were what we may term "old line" statutes. None of them represents an act comparable to the instant

New York Act; none presents the economic background of the New York Act.

The fair value of services is a quantum meruit determinable by various standards. Courts have long been accustomed to dealing with fair value of services. Economists and scientific cost accountancy have evolved methods of allocating, with results approaching mathematical accuracy, the value of particular services in the ultimate cost or sales value of a product or service. (See Factual Brief, Part VII.) This is therefore no novel nor vague and indefinite standard. When the wage paid a class of workers in an industry is not only lower than the value of the services, but also less than the minimum cost of health maintenance, it becomes an "oppressive", or prohibited and illegal wage.

The minimum cost of health maintenance in a community is also reasonably and accurately determinable. Welfare agencies and public relief agencies have been and are daily administering relief on a bare health maintenance basis which is carefully worked out for public or private expenditure. Thus, we find in the family budget analysis of the New York State Temporary Emergency Relief Administration such a study for relief distribution per person and per family. Thus, too, we find the amount set by private and public agencies in New York City. (See Factual Brief, pp. 32-36.) A research foundation supported by industrialists, employers all, has made such a study and reaches a higher figure than those of the public or private agencies. Be it remembered this is not used in any manner as a standard in fixing the "fair minimum wage". It is used as a *danger signal* to a wage board or to the Industrial Commissioner. If wages are below that limit, there are "oppressive wages" present, *only if* inquiry reveals that the wage is also less than the fair value of the services rendered.

A wage lower than the minimum cost of health subsistence is not an "oppressive wage" if it be the fair equivalent of the value of the services rendered. The

statute does not interfere with the payment of a wage that represents the fair value of the services rendered, *even if* it be lower than the minimum cost of health subsistence. In fact, that is precisely the case at bar. *The minimum fair wage fixed is lower than the cost of living standard.* No better example of the fallacy of the Court of Appeals' decision is needed than this fact. And also—if the wage paid be higher than the cost of health maintenance, even if it be less than the fair value of the services rendered, it is not "oppressive". In such instances the cost of health maintenance acts as a safeguard to the employer. The State's interest in the health and welfare, so far as this statute authorizes enforcement, ceases when it is ascertained that the wages paid are at least equal to the minimum cost of health maintenance.

The "fair minimum wage", on the other hand, is the amount which the wage board is authorized to fix in order to correct oppressive wage conditions when such are found to exist, as above pointed out. It is defined as a wage "fairly and reasonably commensurate with the value of service or class of service rendered." A wage equivalent to the value of services is not "oppressive" even if less than "the cost of health maintenance." A wage equal to the "cost of health maintenance" is not "oppressive" even if less than the fair value of services. It follows that the "fair minimum wage" can never exceed the fair value of services rendered. The "fair minimum wage", indeed, will be below "fair value" where the "cost of health maintenance" is less than "fair value", because a wage which is equal to either of these standards, whichever is the lower, is not "oppressive".

In the instant case, the "fair minimum wage" has been unanimously approved and determined by representatives of the laundry industry as well as by the representatives of the public and workers. No protest has been heard as to its fairness in the public hearings, and none was made in the arguments below. Clearly, the "fair wage" herein set as a minimum has only the value of services as its

basis since it falls below the cost of health maintenance on the basis of the information available to the wage board and public authorities. Thus, in no sense could the so-called "cost of living" factor have entered therein. In both theory and practice, the statute refutes the conclusion of the Court of Appeals and points the distinction between the New York and District of Columbia Acts.

Issue.

The issue here is whether this form of statute under conditions shown presently to exist is a valid exercise of the police power of the State.

The Legislature enacted the Minimum Wage Law as a proper and necessary exercise of the police power of the State of New York (Sec. 550). That power, inhering in the sovereignty reserved to the States, is the measure of the validity of the Act. Many times this Court has said that the Constitution does not prohibit State regulation for the public welfare, but merely conditions the exertion of the admitted power by assuring that the means shall reasonably tend to accomplish the end in a manner neither arbitrary nor capricious. (*Nebbia* v. *New York*, 291 U. S. 502.)

It is well settled that underlying conditions of fact determine the necessities of the public welfare and so condition the validity of legislation. (*O'Gorman & Young* v. *Hartford Insurance Co.*, 282 U. S. 251.) Changing conditions may give validity to regulations which at other times and under other conditions may have been invalid. (*Holden* v. *Hardy*, 169 U. S. 366; *Euclid* v. *Ambler Realty Co.*, 272 U. S. 365.)

The burden of showing a statute to be palpably in excess of legislative power rests on him who assails the exercise of the power. The Legislature is presumed to have acted upon proper grounds. *Missouri Pacific R.R.*

v. *Norwood*, 283 U. S. 249; *Bordens Farm Products* v. *Baldwin*, 293 U. S. 194.

Primarily, it is a legislative function to determine the necessities of the public welfare, and where the constitutional validity of a statute depends upon the existence of facts, the Courts will be cautious about reaching a conclusion contrary to that of the Legislature. (*Radice* v. *New York*, 264 U. S. 292.) Nevertheless, the Courts must be able to see that police power regulations have a real and substantial relation to an existing public evil. (*Jacobson* v. *Mass.*, 197 U. S. 11.) It is in recognition of this duty of the Court that there has been submitted herewith a factual brief which contains a detailed study based upon actual surveys of the conditions underlying the ultimate conclusions of fact stated by the Legislature.[1] From this study the Court may see that the Legislature's determination is one supported by the facts; that its judgment that the Minimum Wage Law is reasonable and necessary for the promotion of the public welfare is founded on experience rather than speculation. It is upon the legislative finding and the facts in support thereof that this Court must determine whether the Minimum Wage Law here under review reasonably promotes the public welfare in a manner neither arbitrary nor capricious.

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[1] Authority for the consideration of such material by the Court may be found in the following cases: *Muller* v. *Oregon*, 208 U. S. 412, reports and opinions from other than judicial sources; *Bunting* v. *Oregon*, 243 U. S. 426, statistics on average hours of labor; *Coty, Inc., of New York* v. *Hearn Dept. Stores, Inc.*, Sup. Ct. N. Y. Co., New York Law Journal, Nov. 26, 1935, books, articles and other literature; *Block* v. *Hirsh*, 256 U. S. 135, matters of common knowledge; *Levy Leasing Co.* v. *Siegel*, 258 U. S. 242, reports of official investigating committees; *Prentis* v. *Atlantic Coast Line*, 211 U. S. 210, and *Chastleton* v. *Sinclair*, 264 U. S. 543, the rule that Courts may determine for themselves facts upon which to postulate a rule of law.

POINT I

The New York Minimum Wage Law meets all requirements of due process under the Fourteenth Amendment.

There can be no question that both the employer and the employee are to a certain extent deprived of their liberty to contract by the Minimum Wage Law. But if they are deprived of this liberty according to the established concepts of due process, if the Minimum Wage Law corrects a known and stated public evil, if it promotes the public welfare—in short, if it is a reasonable exercise of the police power—then it is consonant with the Constitution and is a proper exercise of legislative power.

McCulloch v. *Maryland,* 4 Wheat. 316, 421.
Nebbia v. *People,* 291 U. S. 502.
McLean v. *Arkansas,* 211 U. S. 539.

Furthermore, in determining the constitutionality of a statute involving the police power, this Court does not inquire into the wisdom of the policy adopted nor into the economic or social desirability of the legislation. If there is some quantum of reasonableness present in the determination of the Legislature, and unless the act in question is unmistakably and palpably in excess of legislative power, the action of the Legislature is free from objection on constitutional grounds.

Nebbia v. *People,* 291 U. S. 502.
Northern Securities Co. v. *United States,* 193 U. S. 197.
McLean v. *Arkansas,* 211 U. S. 539.
Jacobson v. *Massachusetts,* 197 U. S. 11.
Mugler v. *Kansas,* 123 U. S. 623.
Minn. v. *Barber,* 136 U. S. 313, 320.
Atkins v. *Kansas,* 191 U. S. 207, 223.

O'Gorman & Young v. *Hartford Ins. Co.*, 282 U. S. 251, 257, 258.

It is the contention of the appellant that the Minimum Wage Law operates in a reasonable, fair and practical manner; that the prevention of exploitation of women and minors in industry tends to promote the public welfare; that the means provided bear a real and substantial relation to the objects sought to be attained, as contained in the legislative finding of fact; that it is reasonable for the New York State Legislature to determine that the Minimum Wage Law is economically and socially a desirable solution to the problem of the health and well-being of women in industry and to industry itself, and that the means used would serve the ends sought.

A. The end is legitimate and the means reasonable.

(1) The Assurance of a Fair Wage.

The ultimate end sought by the Legislature is, of course, the promotion of the public good. The immediate end is the establishment of a wage for women and minors which is reasonably and fairly commensurate with the value of the services rendered. The Legislature, in addition, by means of a minimum wage, endeavored to protect industry from the evils of unfair competition which undoubtedly accompany the exploitation of employees by the least conscionable group of employers. No one can quarrel with the legitimacy of the end sought.

The mechanics set up include investigation by the Industrial Commissioner, the inquiry and reports of the Wage Board, the probationary order issued after a public hearing, the trial period for the order, the mandatory order subsequently issued only after another public hearing, the complete power of modification and review, and the determination of the actual wage scale through a process of evaluation of a fair compensation for the service rendered.

Perhaps the most appropriate manner by which to illustrate the actual application of the statute in determining the minimum wage is the finding of the Wage Board for the laundry industry, involved in the present appeal. The Wage Board in the laundry industry found that in May of 1933 sixty-nine percent of the women and minors employed in laundries were receiving a wage of less than $12 per week. The average weekly wage at that time was found to be $10.41. At the same time, the Laundry Wage Board had before it the experience of social welfare and relief agencies in New York State, in respect of the minimum subsistence level and also the minimum cost of maintaining a normal standard of health. The wages paid in the laundry industry were found to be less than *both* the reasonable value of the services performed and the minimum cost of maintaining the health standard. (See pages 32 to 36 inclusive of Factual Brief.) For 1926, the National Industrial Conference Board, Inc. (maintained by employers) found the minimum cost of living for health to be $16.53. The cost of living has declined by 20% from 1926 to 1933. The figure thus determined would be a minimum of $13.21 at the time of the making of the Wage Order for the laundry industry. Taking into consideration the value of the services rendered, as well as the ability of the industry to pay, the Wage Board set a figure of 31 cents per hour in the New York City area, or $12.40 for a forty-hour week, which was considered as the standard for the basic work week.

The wage found for the laundry industry was thus less than the necessary normal health standard for an employed woman and was based solely upon the fair value of the services rendered. The wage set was in accordance with the value conceded by the laundry industry to be fair for the services rendered. In fact, in the Court of Appeals, a representative portion of the laundry industry appeared as *amicus curiae* in support of the Minimum Wage Law and of the laundry wage order.

Thus it must be seen that the standard established by the Legislature, as applied to the laundry industry through the Wage Board, does not use the cost of living standard to raise the minimum wage above what is found to be a fair return for the services rendered.

The use of the standard of reasonable value for the services rendered and the method of determining this reasonable value is one long familiar to the Courts.

> *Heublein* v. *Wight,* 227 Fed. 667.
> *Varney* v. *Ditmars,* 217 N. Y. 223, 228.
> *Nichols* v. *Olympia Veneer Co.,* 139 Wash. 305.
> *Lilliard* v. *Oil Paint & Drug Co.,* 70 N. J. Eq. 197.
> *Cotter* v. *Coatsville Boiler Works,* 257 Pa. 411.

This statutory formula follows the traditional Anglo-American principle of law in applying the standard of reasonableness. It is the practice that has governed the determination of suits on a quantum meruit basis for centuries. It is safe to say that not a day passes but that one of our courts is confronted with some claim by a plaintiff for the reasonable value of services rendered by him to his employer. It is the practice that has guided wage boards for decades in other English-speaking countries with our own traditions of fair play and adequate scope of freedom of contract. The standard is entirely capable of practical application with a very reasonable degree of accuracy. In recent years, in addition to the experiences of our courts, comprehensive analyses of the industrial and economic arts have yielded techniques and devices for appraising the reasonableness of a wage. (See Factual Brief, pp. 76 to 145.)

In *Texas etc. R.R.* v. *Railway Clerks,* 281 U. S. 548, the assurance of a fair wage between the employers and employees on the railroad was held so essential to the maintenance of actual freedom of contract that the Court granted an injunction against an attempted interference

with the provisions of the Railway Labor Act of 1926 (44 Stat. 579 [1926], 45 U. S. C. Supp. VI, Sec. 154 [1932]). That statute provided that labor disputes were to be settled by arbitration between representatives of the employer and the worker. The theory of the Courts is that some form of wage fixing, whether it be through collective bargaining or some other device, is necessary to assure to the interested parties equality of bargaining power. The assurance of a minimum fair wage establishes rather than restricts the freedom of contract.

(2) Elimination of Sources of Unfair Competition.

The legislative determination to attempt, by means of the minimum wage, to protect industry from one source of unfair competition, has a large and familiar foundation in such statutes as the Federal Trade Commission Act, the Clayton Act and the Interstate Commerce Act. These statutes all have as their purpose the elimination of unfair competitive tactics. An employer who regularly pays less than a "fair wage" would have a definite and unfair advantage over his less grasping competitor were it not for the equalizing effect of such a statute (see *Central Lumber Co.* v. *South Dakota,* 226 U. S. 157; *Whitfield* v. *Ohio,* U. S. Supreme Court, March 2, 1936; 56 Sup. Ct. Rep. 532—prohibition on sale of prison-made goods held constitutional as a valid exercise of the State's power to remove a source of unfair competition). The New York statute involved in the case of *Nebbia* v. *People,* supra, is another example of judicial approval of a statute designed to prevent unfair competition and thus assist and indeed save industry.

(3) Minimum Wage Legislation for Women and Minors Has Received General Legislative Recognition.

Statutes which assure the maintenance of a fair wage and the maintenance of a fair price have been, as we have

seen, sustained on the ground that they have saved industry from hardship or injury. The New York Minimum Wage Law preserves this principle of a fair wage and at the same time performs a double function by eliminating one source of unfair competition.

The New York State Legislature is not alone in its findings that minimum wage statutes for women and minors in industry are reasonably adapted to the ends sought to be attained. Minimum wage laws of various types are in existence in sixteen states in this country.[1] In addition, the Governments of Puerto Rico, Great Britain, the Canadian Provinces of Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec and Saskatchewan, Germany, Mexico, Union of South Africa, Czechoslovakia, Hungary, Uruguay, Spain, Italy, Russia, Chile, Ecuador, Costa Rica, Nicaragua, Cuba, Peru, Australia, New Zealand, Argentina, France and Norway have established minimum wage laws. (See Point VIII—Factual Brief.) With this heritage, can it be said that New York State, by the conditions shown to prevail therein, is not justified in determining that a Minimum Wage Law is reasonably adapted towards the desired goal?

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[1] California—(Hennings General Laws, edition 3 [Hyatt], 1920, Act 2107; Session Laws, 1929, Ch. 256); Colorado—(Compiled Laws, 1921 [published 1922], Secs. 4262-4283, 4329); Connecticut—(Cumulative Supplement to the general statutes: 1931, 1933, Ch. 131a, Secs. 620b-633b); Illinois—(Session Laws, 1933, pp. 597-604); Massachusetts—(Session Laws, 1933, Ch. 308; 1935, Ch. 267); Minnesota—(General Statutes, 1927, Secs. 4033-4034, 4210-4232); New Hampshire—(Session Laws, 1933, Ch. 87); New Jersey—(Session Laws, 1933, Ch. 152); New York—(Session Laws, 1933, Ch. 584); North Dakota—(Supplement to Compiled Laws, 1913-1925, Secs. 396b3, 396b6-396b9, 396b11-396b16; Session Laws, 1935); Ohio—(Session Laws, 1933, pp. 502-510); Oregon—(Session Laws, 1931, Ch. 395; Code, 1930, Vol. 3, title 49, Secs. 303-319); South Dakota—(Compiled Laws, 1929, Secs. 1022a-1022e; Session Laws, 1931, Chs. 173, 174); Utah—(Session Laws, 1933, Ch. 38); Washington—(Pierce's Code, 1929, Secs. 4-3, 4-74, 4-75, 4-77, 4-82; 3526-3547); Wisconsin—(Statutes, 1931, Secs. 20-57, 101.02, 104.01-104.12).

B. The maintenance of the health of women in industry is of deep concern to the State. Where a lack of equality of bargaining power exposes persons to exploitation, legislation to remedy this situation will be sustained.

The social and economic circumstances surrounding the employment of women, affected as they are by physiological considerations, have repeatedly been the basis of judicial statements to the effect that women are in a class by themselves as a special concern of the State. Their health and welfare in the performance of physical labor is held so fundamentally to affect the public welfare and to be so much an object of public interest and concern that legislation designed for their special protection has been sustained even when like legislation for men might not be.

Muller v. *Oregon,* 208 U. S. 412; sustaining Oregon 10 hour law for women.

Riley v. *Mass.,* 232 U. S. 671; sustaining Mass. 54 hour week law for women.

Hawley v. *Walker,* 232 U. S. 718; sustaining Ohio 9 hour per day statute.

Miller v. *Wilson,* 236 U. S. 373.

Bosley v. *McLaughlin,* 236 U. S. 385; the last two cases sustaining the constitutionality of the California statute limiting the labor of women to 48 hours per week.

Radice v. *New York,* 264 U. S. 292, sustaining N. Y. night work statute.

People v. *Charles Schweinler Press,* 214 N. Y. 395.

The changes which our modern industrial system has brought in the economic status of the family have also brought to women growing responsibilities for shouldering the support of others. With their changed economic status it is evident that the earning capacity of women as well

as the physical circumstances surrounding their employment reflect on the health and welfare of themselves, their families and the community as a whole. The tremendous influx of women and minors into industry in New York State in recent years is shown in Charts I and II of the Factual Brief annexed. Other data contained in Part I of that brief indicate the numbers of women employed outside the home, the growing tendency for women to continue working after marriage and the extent to which they must support themselves and others.

As wage earners and family breadwinners thousands of women now share the role traditionally ascribed to men. Women are not in the same position as men, however, as regards their bargaining power and their ability to secure a fair return for their services. It is a matter of common knowledge that women constitute a low wage group in the labor market.

Statistics gathered throughout the United States show that in New York State and indeed in the entire country, in practically every case where women and men are employed in the same occupation, women receive considerably less than men for the same number of hours and the same type of work. In Chart IV of the Factual Brief appended hereto the results of data compiled by the United States Bureau of Labor Statistics on average earnings for men and women employed in the same occupations are set forth. (See Factual Brief, pp. 23-26.) In most of these occupations, as may be seen, the work is primarily light machine labor which may be performed with equal facility by either sex. The reason to which may be ascribed the disparity of wages, and which the Legislature is justified in assuming, is that women are not equally capable with their fellow male workers in driving a fair economic wage bargain. As a further indication of the peculiar inability of women to bargain fairly with unconscionable employers, we have the statistics evidencing the widely varying rates paid to women in the same industry for the same work. (See pp. 19-22 of the Factual Brief.)

There are numerous reasons why women are at a disadvantage in respect to the wage bargain. Tradition doubtless plays an important part, since women's labor has always been regarded as cheap labor, and low wages were long justified on the basis that women worked merely for "pin money". Another factor affecting adversely any real bargaining power of women in industry is that many of their sources of employment are subject to sharp seasonal movements. (See pp. 44-47 of Factual Brief.) It is also common knowledge that women have not been as well informed about conditions in the labor market as are men and that they are less mobile as a labor group. In these respects the low wage level of women has been self-perpetuating. Those who do not earn enough to support themselves must live with their families and be partially supported by others. Their family ties make them unable to move from place to place in search of better opportunities. These women whose earnings are supplemented from other sources are a constant drag on the wage level and offer formidable competition to the growing thousands of women who have no other means of support than their own labor and, in many cases, have others dependent upon them. Low wages cause one of the vicious circles in our modern economic life. The community pays the bill continually, whether directly by supplementing low wages with relief funds or indirectly through the social costs of physical deterioration and poverty.

The lack of trade union organization among women is another important factor affecting their wages. Where such organization exists, there can be no question that it has done much to stabilize the conditions of and wages for work. The union, by collective bargaining, tends to equalize the employee's bargaining power with that of his employer. Women, however, are for the most part unorganized. According to the figures provided by the labor unions themselves (and which are, as a result, in many cases likely to be unduly large), only a small percentage of the one and a half million women gainfully

employed in the State of New York are members of labor unions. Fully half of these organized women are employed in one industry—the manufacture of women's outer clothing. It is interesting to note that in this highly organized industry in New York State the average weekly earnings of women for 1933 were $18.39, as compared with an average of $13.35 for women in all manufacturing industries combined. (See Table XII, Factual Brief.) In the laundry industry, where practically none of the women are organized, women's average weekly earnings were found to be $10.41 at the time of the investigation in May, 1933.

There can be little dispute with the proposition that a worker is entitled legally and ethically to full payment for what he has earned.

> *Adkins* v. *Children's Hospital,* 261 U. S. 525, 558-559.

The legal duty placed upon the employer by this statute is that he must pay women and minor employees the fair value of the services rendered. When the wage equals or is more than the cost of maintaining a normal health standard, the condition of the women in a particular industry ceases to be a menace to public welfare. If within this defined limit an employer pays less than the fair value of the services rendered, by virtue of his more secure and potent economic position, the transaction smacks of fraud, exploitation and over-reaching.

In *Holden* v. *Hardy,* 169 U. S. 366, it was said:

> *"The proprietors lay down the rules and the laborers are practically constrained to obey them. * * * But the fact that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere where the parties do not stand upon an equality, or where the public health demands that one party to a contract shall be protected against himself. 'The State still retains an interest in his welfare, however reckless he*

may be. The whole is not greater than the sum of all the parts and when the individual health, safety and welfare are sacrificed or neglected, the State must suffer.'" (Italics ours.)

Restraints upon the liberty to contract have been declared constitutional in many cases which have involved the contract between the employer and his employee.

Patterson v. *The Eudora*, 190 U. S. 169.
(Prohibition on advance payment to sailors sustained.)
Keokee v. *Taylor*, 234 U. S. 224.
Knoxville Iron Co. v. *Harbison*, 183 U. S. 13.
(Both cases sustaining statutes prohibiting payment of wages in scrip unless redeemable at face amount.)
McLean v. *Arkansas*, 211 U. S. 539.
(Requiring coal to be weighed before screening where wages are based on the weight of coal mined.)
Erie Railroad Co. v. *Williams*, 233 U. S. 685.
New York Central Railroad v. *Williams*, 199 N. Y. 108.
(Both cases holding regulations of time of payment of wages constitutional.)
St. Louis Iron Mt. etc. Ry. v. *Paul*, 173 U. S. 404.
(Sustaining statutory requirement that wages be paid on date of discharge.)
Strathearn Steamship Co. v. *Dillon*, 252 U. S. 348.
(Sustaining regulation on payment of wages to sailors.)

The underlying principle in all these cases is the State's right and indeed its duty to interfere in the terms of a contract between private parties when there is such an inequality in bargaining power that "it is illusory to speak of liberty of contract".

German Alliance Ins. Co. v. *Lewis*, 233 U. S. 389, 417.

These cases have all involved legislation whose purpose it was to protect the right of the worker to what he had earned and to invalidate devices used to avoid honest remuneration. These cases sustain the statutes on constitutional grounds as proper exercises of the police power in spite of the fact that a definite restraint of the liberty to contract had been imposed. **These decisions directly controvert the appellee's contention that he has a constitutionally protected right to use without limit his superior economic position to drive as hard a bargain as he can.** All indicate judicial recognition of the fact that the wage relation is a matter of public concern; that it is a legitimate subject of legislative regulation and that the particular legislative regulation will be sustained if warranted by public necessity, public health or welfare.

Instances in which legislation has directly or indirectly restrained the bargaining power of the more powerful in order to prevent them from enjoying its full economic potency are numerous. In the foreground are cases involving the validity and constitutionality of usury laws.

Griffiths v. *Connecticut*, 218 U. S. 563.
General Business Law (N. Y.), Sections 370-371.

The public purpose served by these usury statutes is the same, i.e., the prevention of contracts which are coercive and unfair. This legislation and the decisions sustaining it declare that it is the better public policy not to have loans made on a basis that is likely to prove ruinous to the borrower. So it is believed that it is better public policy not to have industry conducted on a basis that is likely to prove ruinous to employees. Those who do not get the loans and those who do not get the jobs may suffer for a time, more than if they can borrow on usurious interest, or work for less than the value of the services performed and the sum necessary for subsistence. But the Courts have weighed against these regrettable results the advantages which come to

those whose loans and jobs are on a basis which is fair and consonant with the general public welfare.

See:

Powell: The Constitutional Issue in Minimum Wage Legislation, 2 Minn. L. Rev. 1.

Combinations in restraint of trade have also given rise to legislation and decisions which have as their purpose the protection of the weak from the strong. These statutes and decisions are premised on the same need to control bargaining and competition that underlies minimum wage legislation. It was the lack of any real freedom of bargaining which made the New York Rent Laws valid (*Block* v. *Hirsh,* 256 U. S. 135; *Marcus Brown* v. *Feldman,* 256 U. S. 170), and which justified State fixation of the price of milk (*Nebbia* v. *People,* 291 U. S. 502).

The *Nebbia* case upheld price fixing because there existed a maladjustment materially restricting the regulative forces of competition. (*Ribnik* v. *McBride,* 277 U. S. 350, 360.)

In the *Nebbia* case it was held that one may be compelled to pay a greater sum than that which may be asked because at another end of the industrial scale is found one who may not be paid what his product is worth and who may be unable to bargain freely with those who possess the marketing facilities. In prior cases, the Court has ofttimes frowned upon devices which have restrained competition. But, in the *Nebbia* case, and in the instant case, the statutory devices tend to preserve and promote the competitive system by assuring the parties a bargain on the merits, rather than a bargain with one side compelled to take what is offered.

Standard rates of interest for loans (Sec. 370, General Business Law, N. Y.); regulation of employment agencies (*Brazee* v. *Michigan,* 241 U. S. 340); standardized terms and rates for insurance policies (*National Union Fire Ins. Co.* v. *Wanberg,* 260 U. S. 71; *German Alliance Ins. Co.*

v. *Lewis,* 233 U. S. 389; Sec. 121, Insurance Law, N. Y.); a standard minimum wage in public employment on public projects (*Atkins* v. *Kansas,* 191 U. S. 207)—are all examples of a public interest in private bargains which outweigh the interest of individuals to make their bargains on the best or worst terms that they can get under unrestricted freedom of contract. The deprivation of abstract legal freedom to each individual is deemed less important than the adoption of general standards dictated by the considerations of a wide general policy.

The New York State Minimum Wage Law is in the same tradition. It recognizes that desperate competition for jobs gives an unscrupulous employer power to deprive his employee of what she has fairly earned. The result is another and a most effective means of defrauding the worker and avoiding full payment, and as such can be invalidated as any other scheme having the same effect. The Minimum Wage Law promotes and does not restrict real freedom of contract.

The liberty of contract urged so strenuously by the appellee is merely the liberty of an employer to contract for a wage which is less than the value of the services received, and the liberty of an employee to have the wage forced upon her by the economic compulsion of a crippling necessity.

> "Necessitous men are not, truly speaking, free men, but, to answer a present exigency, will submit to any terms that the crafty may impose upon them."
>
> *Vernon* v. *Bethell,* 2 Eden 110, 113.

The Minimum Wage Law, to paraphrase the language of Mr. Justice BUTLER in *Highland* v. *Russell Car etc. Co.,* 279 U. S. 253, 262, merely deprives the employer of the right or opportunity by negotiation to pay less than the fair value of the services rendered.

See also:

Chicago R.R. v. *Wellman,* 143 U. S. 339-346.

The determining test in any case involving the police power is whether or not the public benefit outweighs the resulting burden on individual interests. The "burden" on the employer under the Minimum Wage Law is a requirement that at most he pay to his employees no more than the value of what they have given him. Such deprivation of "liberty" as the employer may urge is really the deprivation of his power to cheat. The Constitution guarantees to no one the right to cheat or to exploit another.

Chicago R.R. v. *Wellman,* 143 U. S. 339-346.
Highland v. *Russell Car,* 279 U. S. 253.
Patapsco Guano Co. v. *Board of Agriculture,* 171 U. S. 345.

C. The Courts have permitted the fixing of wages in industry.[1]

This Court, in *O'Gorman & Young* v. *Hartford Fire Ins. Co.,* 282 U. S. 251, has sustained as constitutional legislation fixing minimum compensation for services performed. The New Jersey statute considered in that case set up a minimum scale of commissions for fire insurance agents.

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[1] Numerous cases involving the constitutionality of minimum wage laws have arisen throughout the United States. In each of the following the statutes were sustained:

Parrish v. *West Coast Hotel Co.* (Supreme Court, State of Washington, April 2, 1936);
State v. *Crowe,* 130 Ark. 272;
Williams v. *Evans,* 139 Minn. 132;
Lasson v. *Rice,* 100 Wash. 642;
Stetler v. *O'Hara,* 69 Ore. 519;
Simpson v. *O'Hara,* 70 Ore. 261.

The cases of *Stetler* v. *O'Hara* and *Simpson* v. *O'Hara,* supra, were affirmed without opinion by an evenly divided court in *Stetler* v. *O'Hara,* 243 U. S. 629.

The cases of *Topeka Laundry Co.* v. *The Court of Industrial Relations* (119 Kan. 12), *Stevenson* v. *St. Clair* (161 Minn. 444), *Wolf* v. *The Court of Industrial Relations* (262 U. S. 522), *Murphy* v. *Sardell* (269 U. S. 530), *Donham* v. *West-Nelson Mfg. Co.* (273 U. S. 657), *Folding Furniture Works* v. *Industrial Commissioner* (300 Fed. 991), decided that the mini-

In *Bunting* v. *Oregon,* 243 U. S. 426, a statute which provided for a ten-hour day for all workers, and in addition that overtime be limited to three hours per day and be paid for on a time and a half basis, was attacked as unconstitutional. That portion of the statute which was violated and under which the case arose was the provision requiring that time and a half be paid for overtime. This Court sustained that statute.

In the case of *Holcombe* v. *Creamer,* 231 Mass. 99, the Massachusetts Court had before it a statute which set up minimum wage standards in industry. The penalty under that statute was similar to the penalty which may be imposed during the nine months' probationary period provided for in the New York statute. This penalty consisted only of the publication of the names of violators of the minimum wage scale set up by the Minimum Wage Board. The Massachusetts Supreme Court held that statute constitutional.

What is regarded as perhaps the leading case on the constitutionality of wage provisions for women is *Adkins* v. *Children's Hospital,* 261 U. S. 525. This Court there decided that the Minimum Wage Law in the District of Columbia was unconstitutional. It will be discussed and distinguished in Point II of this brief.

Legislation compelling employers to pay a wage equal to the value of the services rendered differs only slightly in detail, but not in principle, from other legislation already sustained as constitutional, such as prohibitions

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mum wage laws under consideration were unconstitutional. In each of these latter cases the decision was based upon the authority of *Adkins* v. *Children's Hospital,* 261 U. S. 525.

However, all of the cases cited in this footnote have dealt with the "old line" minimum wage laws, i.e., statutes whose basis of a determination of a wage was a "cost of living" standard, the amount to be paid being determined by the amount required by employees for subsistence. The instant case is the first case before an appellate court in which an attack has been made upon the constitutionality of a minimum wage statute whose basis for the determination of a wage is the fair value of the services rendered.

against the payment of wages in store order or scrip, requirement that coal be screened after weighing, regulations of the time of payment of wages, regulation of employment agencies, usury laws, the New York Rent Law, the New York Milk Law, standardized terms and rates for insurance policies, standard minimum wage laws for public employment and hours of labor statutes for women. The public good to be served by the statutory minimum wage is akin to, if not identical with, the public good served by legislation such as that previously noted.

POINT II

Adkins v. Children's Hospital, 261 U. S. 525, distinguished.

A. The statutes are vitally dissimilar.[1]

Perhaps the fundamental ground of distinction between the instant case and the case of *Adkins* v. *Children's Hospital,* supra, upon which case reliance was placed by the appellee and upon which the Court of Appeals rested its determination, is the difference between the New York statute and the one considered in the *Adkins* case (40 Stat. at L., 960 C. 174, Comp. Stat. Sec. 3421½-A, Federal Stat. Anno. Sup. 1919, p. 234).

The District of Columbia statute provided for a permanent administrative board of three, representing employer, employee and the public. There was a power, similar to that in the New York statute, to hold hearings, investigate, etc. Sub-section 8 gave the Board the power to investigate the wages of women and minors in the different occupations in which they were employed. By sub-section 8 the Board was given power to ascertain and declare standards of minimum wages for women *in any*

[1] Both statutes are printed in full in Appendices A and B, pp. 55-77, infra.

occupation within the District of Columbia, and what wages were inadequate to supply the necessary cost of living to any such women workers. The Board was also given power to set up standards of minimum wages for minors. *If,* under the statute, *it was found that any substantial number of women were receiving wages inadequate* to supply them with the necessary cost of living, *maintain them in health,* and protect their morals, it could, after public hearings, make an order setting a wage to remedy this situation.

The legislative declaration of purpose was set forth in sub-section 23 to the effect that it was *to protect women and minors from conditions resulting from wages which were inadequate to maintain decent standards of living.*

The purpose of the statute in the Adkins case was to guarantee a wage based solely upon the necessities of the workers. The statute did not provide for the wages to have any relationship to earning power; was applicable to all vocations and not to the character of the work; was exclusively a price-fixing statute, having as its basis the "vague, variable standard" of the "cost of living"; had no relationship between the wage set and the work done, and did not consider the industry's ability to pay.

As contrasted with this statute, the New York Minimum Wage Law provides a definite standard for wages to be paid. *The worker is not to be paid more than the value of the services rendered* (Secs. 551-8, 552). This minimum wage is fixed after consideration of all relevant circumstances and of the principles that would guide a Court in a suit for the reasonable value of services rendered (Secs. 551-8). In each industry there must be a separate investigation conducted by a separate Board. The purpose of the New York statute is to prevent the exploitation of women and children in industry, to eliminate one source of unfair and cut-throat competition, but does not require the employer to pay more than the value of the services rendered.

The New York statute has a nine months' trial period in which the effect of the application of the statute to a particular industry may be adequately observed and measured. Modification after the wage order for each industry has been in operation for a year or more is amply provided for (Sec. 561).

The New York Act amply safeguards the interests of the employer. In the "cost of living" statute, such as that in the District of Columbia, the employer has to pay an amount necessary for subsistence, whether or not the services rendered by his employees are worth that sum. In the laundry industry to which the order under consideration in this appeal was applied, the minimum value of the services, after a consideration of the amount paid to others in the same industry, and the statutory standards, was found to be $12.40 for the standard work-week. This value was approved by the industry's representatives and the industry as a whole.

Under a statute such as the District of Columbia statute, the wage in the instant case would have been at least $13.21 per week, the minimum amount for health maintenance. (Factual Brief, pp. 33-36.)

The New York statute specifically sets up for the purposes of appeal as to the reasonableness of any determination of a wage board the entire machinery of Article 3 of the Labor Law.[1] There is thus provided for all questions arising under the statute an appeal to the Industrial Board, and in the event of an affirmance by the Board, an appeal to the Courts.

B. Underlying questions of fact condition legislation.[2]

The ever increasing number of women seeking employment in New York State over a period of years, their growing responsibility as breadwinners on the one hand,

[1] See Sections 111, 112 of Article 3 of the New York Labor Law and *Helfrick* v. *Dahlstrom Metal Door Co.*, 284 U. S. 594.

[2] *O'Gorman & Young* v. *Hartford Fire Insurance Co.*, supra.

and their increasing insecurity as the most disadvantaged class of wage earners in an unstable industrial system on the other, has been pointed out in the Factual Brief submitted herewith. (Factual Brief, Charts I to III, pp. 1-37.)

Insecurity, low wages and their concomitant evils are by no means new problems. The depression, however, has focused public attention on the evils of unemployment and low wages and has brought about a clearer recognition of the fact that a maladjustment in any one sphere of our economic organization brings increasingly wider repercussions. The expansion of the business structure, intensified competition, mechanization and technological changes—these and many other factors have increased the instability of industry and with it the insecurity of the wage earner.

The tremendous influx of women and minors in industry in New York State in recent years may be seen in Charts I and II in the Factual Brief. (See also Factual Brief, pp. 1, 2.) There has, furthermore, been a growing tendency for women to remain a permanent factor in industry rather than to be the temporary factor of past years. Statistics indicate that women now more than ever continue working after marriage. (Factual Brief, pp. 2-18.)

In *Euclid* v. *Ambler Realty Co.*, 272 U. S. 365, this Court said:

> "Regulations, the wisdom, necessity and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive. * * * In a changing world, it is impossible that it should be otherwise."

Another controlling factor which sharply differentiates the situation presented to the Court in the *Adkins* case from the one presented in this case is the number of wage earners affected. In 1923 there were roughly 17,000

female and minor workers in the very restricted scope of businesses in the District of Columbia. In the present case, the number of women engaged in industry in the State of New York is roughly one and a half million—15 percent of its entire population—and in the laundry industry alone, 22,000. When considering the great variety of industries in New York State in which women are employed, an entirely different social and economic basis is presented.

See *Green* v. *Frazier,* 253 U. S. 233.

C. The opinion of this Court in Adkins v. Children's Hospital sustains the validity of the New York minimum wage statute.

The differences in the underlying facts and in the statutes, of themselves, are sufficient to make the rule of *Adkins* v. *Children's Hospital* inapplicable to the case herein. Furthermore, the New York statute under consideration meets the objections made by this Court to the District of Columbia Minimum Wage Law. The New York Minimum Wage Law measures up to the affirmative standards for minimum wage laws indicated in the opinion in the *Adkins* case.

The objections found by this Court to the District of Columbia statute, as expressed in the opinion in the *Adkins* case, are:[1]

1. "The price fixed by the board need have no relation to the capacity or earning power of the employee, the number of hours which may happen to constitute the day's work, * * * " (p. 555).

The New York Minimum Wage Law expressly limits the "fair" wage to the value of the services rendered after a consideration of all the pertinent factors entering thereinto. (Secs. 551, subds. 7 and 8; 552.)

[1] Italics used herein are our own for emphasis. The [redacted]tations are all from the opinion of Mr. Justice SUTHERLAND in the *Adkins* case.

The distinction is clear. The New York Minimum Wage Act meets the first objection found in the *Adkins* decision.

> 2. "It is based *wholly* on the opinions of the members of the board and their advisers * * * as to what will be necessary to provide a living for a woman, keep her in health and preserve her morals" (p. 555).

The New York Minimum Wage Law bases the fair wage upon studies made to ascertain the value of the services rendered in each industry where oppressive wages are found to exist in substantial measure, and the said fair wage is not based on the cost of the maintenance of health as such. (Secs. 551, subd. 8; 552.) In the District of Columbia statute a single permanent administrative board was established for all industries affected. In the New York statute a different wage board for *each* industry is provided.

No such criticism as found in this instance by the opinion of the *Adkins* case can possibly be levied against the New York statute, which thus meets the second objection to the District of Columbia statute.

> 3. "It applies to any and every occupation in the District, without regard to its nature or the character of the work" (p. 555).

Here, again, we find a vital distinction in which the New York statute fully meets the objection of this Court. The District of Columbia Minimum Wage Law, setting only one standard—the cost of living and maintenance of morals—was applicable uniformly to all industries throughout the District. It was naturally, as a result of the very language of the statute, one of general application throughout a geographic area in which conditions of living were at least in some degree alike. The New York statute, on the contrary, can only be applied

to those industries individually wherein an individual study of conditions prevailing reveals that in the light of the character of the work done, in consideration of the value of the services, there is paid in said industry in substantial measure a wage which is both lower than the fair value of the services rendered and also less than the minimum cost of health subsistence. (Secs. 551, subd. 7; 554-560.)

The New York statute is, therefore, not uniformly applicable to all industries with the fixation of one minimum wage. The rate is set for each industry considered by itself and must therefore be applied to each industry with particular regard to the conditions and the value of the services therein.

4. "The standard furnished by the statute for the guidance of the board is so vague as to be impossible of practical application with any reasonable degree of accuracy" (p. 555).

Contrast this conclusion, applicable to the District of Columbia statute, with the clear and unambiguous standard laid down in the New York Act. We have as the standard of the fair wage the value of the services rendered, and that only. (Sec. 551, subd. 8.) The cost of living is not the basis for the fixation of the fair minimum wage. The cost of living or health maintenance acts only as a jurisdictional feature—giving the Industrial Commissioner the right to appoint a wage board in the industry.

There have been indicated well established methods for ascertaining the value of services rendered in relation to the work or produce resulting from such services. Studies in cost allocation—cost accountancy, cost of commodity production, etc., are factors determinable in many instances with almost mathematical exactitude. The estimation of such values is well known to the Courts. The value of the work on a product or a part thereof can be ascertained in relation to the total cost of production by various methods. (Factual Brief, Part VII.)

Suffice it to state that in the instant case of the fixing of the basic minimum fair wage for the laundry industry, not a single voice has been heard in the entire industry to claim that the wage fixed does not represent at least the minimum fair value of services rendered. Thus the New York statute and the manner of its application herein meet the objection to the *Adkins* case statute in respect of the standard on which the wage is based.

> 5. "*The law takes account of the necessities of only one party to the contract. It ignores the necessities of the employer by compelling* him to pay not less than a certain sum, not only whether the employee is capable of earning it, *but irrespective of the ability of his business to sustain the burden,* * * *" (p. 557).

Here we meet the salient objection found to invalidate the District of Columbia act in the *Adkins* case. Here too we note the basic distinction in the New York statute. Both employer and employee, both the value of the services and the conditions in the industry, are vital to a determination of the minimum fair wage under the New York Act. The employer is considered because he can never be required to pay more than the fair value of the services rendered. And the very basis of the fair wage is the capacity for earning it, the value of the services rendered by the worker. (Secs. 551, subd. 8; 561.)

The ability of the industry in this instance to sustain what may be termed, erroneously, the burden is more than amply indicated by the unanimous support of the industry and the results obtained within the industry before the mandatory order even became effective. All the factors, therefore, deemed vital in the opinion of Mr. Justice SUTHERLAND in the *Adkins* case are found within the New York Act.

> 6. "It takes no account of periods of stress and business depression, of crippling losses, which may

leave the employer himself without adequate means of livelihood" (p. 557).

The New York Minimum Wage Law permits of modification to meet changing conditions, provides for studies and for every reasonable means of guarding against unreasonable provisions. Under the machinery of the New York statute, review of the wages found with relation to the value of services, etc., and reconsideration in the light of conditions which may be found to exist thereafter are provided. (Secs. 561, 562.)

While no such accuracy is possible with one standard from outside of the industry, such as a *cost of living* basis, unrelated to the industrial factors, as was the case in the District of Columbia statute, the contrary is true in the New York Act where the standard fixed for the determination of the wage finds its basis in the conditions prevailing in each industry as a separate entity.

7. "To the extent that the sum fixed exceeds the fair value of the services rendered, it amounts to a compulsory exaction from the employer for the support of a partially indigent person, * * *" (p. 557).

No such objection as this can possibly be raised to the New York Minimum Wage Law in the light of its express language restricting the minimum fair wage to the measure of the fair value of the services rendered. The moment that it is ascertained that the wage paid is not less than the fair value of the services, the authority of the board to fix any other or higher wage ceases. The moment the wage paid is ascertained to be not less than the minimum cost of health maintenance, the interest of the State, insofar as fixing any other wage standard, necessarily also ceases. Thus, the New York Act prohibits only an "oppressive" wage; a fraud upon the worker; a wage which is both less than the fair value of the services rendered and lower than the cost of health maintenance (Sec. 552).

8. "The feature of this statute which, perhaps more than any other, puts upon it the stamp of invalidity is that it exacts from the employer an arbitrary payment for a purpose and upon a basis having no causal connection with his business, or the contract, or the work the employee engages to do" (p. 558).

If we be permitted to paraphrase, in the light of the New York Minimum Wage Law, the above language of the opinion in the *Adkins* case, we might with full justice state, "the feature of this (the New York) law which perhaps more than any other puts upon it the stamp of constitutional validity is that it exacts from the employer no more than the reasonable value of the services rendered, a basis solely related to his business, to the contract, and to the work which the employee engages to do." Thus, finally, do we find met in the New York statute the last objection contained in the opinion of this Court in the *Adkins* case. In every instance the New York Minimum Wage Law meets the objections of the Court.

We now pass to affirmative standards which may be said to be required of such a statute, as found in the opinion of this Court in the *Adkins* case.

1. "The ethical right of every worker, man or woman, to a living wage may be conceded. One of the declared and important purposes of trade organizations is to secure it" (p. 558).

Under the New York statute, the minimum fair wage to be fixed can never be *higher* than what was conceded to be the ethical right of every worker. It may *equal* the so-called "living wage". In many cases, as in the instant case, it is even lower than that "ethical right".

2. "And with that principle and with every legitimate effort to realize it in fact, no one can quarrel" (p. 558).

The New York Minimum Wage Law takes but a small step in this appropriate direction. Since the law is only intended to protect from an oppressive wage, partaking of the element of fraud and economic duress, it cannot be said that the standard of the New York statute is either unreasonable or arbitrary. It is, therefore, within the precise language of the *Adkins* case, a "legitimate effort" to realize the end there held to be appropriate. Neither does the New York statute assume the "fallacy", that employers are bound at all times to furnish this cost of living. The New York statute merely forbids a wage less than the value of the services, and then only when such wage is also less than the minimum cost of health maintenance.

3. "The moral requirement implicit in every contract of employment, viz: that the amount to be paid and the service to be rendered shall bear to each other some relation of just equivalence, is completely ignored" (p. 558).

Again may we be permitted to paraphrase to bring out the distinction in the New York statute—"The moral requirement implicit in every contract of employment is here completely fulfilled." It is fair value of the services rendered. We achieve the consummation desired by the opinion in the *Adkins* case—"the just equivalence" of the wages and the services rendered.

*The liberty which the appellee herein claims to be deprived of is the liberty to ignore that "moral requirement implicit in every contract * * * of just equivalence."*

4. "Certainly the employer by paying a fair equivalent for the service rendered, though not sufficient to support the employee, has neither caused nor contributed to her poverty" (p. 558).

The New York statute does not require that he pay any more than the minimum fair value or equivalent of the services rendered.

5. "A statute requiring an employer to pay in money, to pay at prescribed and regular intervals, *to pay the value of the services rendered,* even to pay with fair relation to the extent of the benefit obtained from the service [redacted] would be understandable" (p. 559).

The New York Minimum Wage Law does no more than this. In fact, the statute does not go so far as the last qualification. The New York Act stops with the minimum fair value of the services rendered. Even this permitted aim we do not attain under the New York statute unless the wage paid is also lower than the minimum cost of health maintenance. The standard fixed in the New York law is, therefore, within the "understandable" limitations indicated by the decision in the *Adkins* case.

6. "We have been furnished with a large number of printed opinions approving the policy of the minimum wage, and our own reading has disclosed a large number to the contrary" (p. 559).

We submit in this case a thorough analysis of the background of the statute enacted by the New York Legislature—an analysis dealing with the position of women in industry in the State of New York in relation to the wages received, in comparison with like wages for identical work received by others—in relation to the separate industries in which women are largely engaged—a detailed study of the industry affected and out of which this litigation arose.

Emphasis is not placed by the appellants herein upon opinions of observers or students of the subject, however "mildly persuasive" they may appear to be. We place our emphasis rather upon the compelling accumulation of factual material establishing: (1) the need for protecting women in industry in New York State from overreaching and exploitation by employers in certain industries; (2) the inability of the laundry industry and others to maintain voluntary fair minimum wages because of

destructive competition which threatens the stability of those industries. These facts were all available to the Legislature of New York and it is respectfully submitted they amply support the statute before the Court.

Thus, we find for every objection offered by this Court in the *Adkins* case a complete answer in the New York statute; for every affirmative qualification indicated—a standard in the New York Minimum Wage Law which meets this qualification. It may be stated with confidence that the majority opinion in *Adkins* v. *Children's Hospital*, supra, furnishes the fullest justification for declaring the New York Minimum Wage Law a valid enactment under the Fourteenth Amendment.

The *Adkins* case discussed the statutes and decisions previously cited herein (pp. 26, 27, infra) and whose purpose and tendency it was to prevent unfair and fraudulent methods in the payment of wages. These cases were cited with approval, but distinguished (p. 547, *Adkins* case). Those decisions may not have been applicable in the *Adkins* case, but they are directly in point in any consideration of the New York statute, whose purpose is akin to the statutes sustained in those cases.

In discussing the decisions relating to hours of labor, this Court held them inapplicable in the *Adkins* case by saying that the statutes involved were limited to certain occupations. Similarly, the New York statute applies only to those occupations where the evils of "unreasonable and oppressive wages" are found to exist.

In the *Adkins* case, the Supreme Court considered the time not yet ripe for a consideration of the economic valuation of the Minimum Wage Law. The Court said:

> "No real test of the economic value of the law can be had during periods of maximum employment, when general causes keep wages up to or above the minimum; that will come in periods of depression and struggle for employment when the efficient will be employed at the minimum rate while the less capable may not be employed at all" (p. 560).

That language was written in 1923. In the years of "depression and struggle for employment", the employer, seeking to gain a competitive advantage, has been quick to seize upon the use of an oppressive wage in those industries where women, employed in large numbers, have been unable to stand upon an equal footing in bargaining. The time for an evaluation of the Minimum Wage Law, as indicated by this Court, has come.

D. The New York Minimum Wage Law in operation.

Earlier in this brief (pp. 17-21) we discussed the rational relation between the means set up and the ends sought to be attained by the Minimum Wage Law. In this connection, analysis of the actual results and effects of the Minimum Wage Law, as applied to the laundry industry, is extremely persuasive in any evaluation of the legitimacy of the end and the reasonableness of the means.

In 1926 a survey of women's wages in laundries showed that earnings for a full work week ranged from less than $5 a week in some laundries to more than $35 a week in others. The average earnings were $14.67. In 1929, coincident with the increase in business prosperity, wages had risen somewhat. At about that time the Laundry Board of Trade attempted to establish a minimum wage of $15 a week for women, but this attempt failed. (See pp. 48-57 of Factual Brief.)

A survey conducted in 1931 indicated that wages had dropped below the 1926 level. By 1933 the continued price-cutting made possible by the payment of unreasonably low wages resulted in such a chaotic condition in the laundry industry that the Laundryowners Association and affiliated organizations supported and urged the passage of the State Minimum Wage Law.

In 1933 the laundry industry in New York State employed over 22,000 women and minors. The investigation

of laundries in May of 1933 showed that the average weekly earnings of women at that time were $10.41. In November, 1933, after the directory wage order had been in effect for one month, the average weekly earnings of women and minors in all laundries had increased to $12.12, or 16 percent. This increase in weekly earnings is even more significant when related to the hours worked, for the average working week was 45 hours in May and had decreased to 40 hours in November. By November of the next year (1934) three months after the mandatory wage order became effective, the average weekly earnings of women and minors in the laundry industry had further increased to $13.17, and a year later, in November, 1935, to $13.42. Thus, the average weekly earnings of women laundry workers increased 29 percent between May, 1933, and November, 1935. Although the period from 1933 to 1935 was one of rising prices and increasing wages throughout industry, these wage increases for women in the laundry industry were far greater than those for women employed in industry as a whole in New York State. (See pp. 71-72 of Factual Brief.)

There has been no discernible tendency for the minimum wage to become the maximum as a result of the wage order, or for the wages of the higher paid employees to be reduced. (See Factual Brief, pp. 69-75.) Under the directory order, 31 percent of the women and minors employed in the industry were receiving wages higher than the prescribed minimum; under the mandatory order (November, 1935) 42 percent were being paid more than the minimum rates. The remainder were paid at minimum rates excepting employees of those violating the order. Such a result is in harmony with the purposes of the law and clearly illustrates the proper application of its principles to the laundry industry. Here the work of women is largely routine and unskilled; the minimum fair wage fixed by the Board represented the minimum fair return for the services of the least skilled group. The wage order has prohibited the employment of women

at wages below that minimum; it has not operated to prevent the more skilled or efficient workers from securing a higher return for their services, *above* the minimum. Nor has the increased wage resulted in the replacement of women by men in the industry. In 1935, as in 1933, women formed 60 percent of the employees in New York State laundries.

That the industry was well able to absorb the wage increases effected by the mandatory order is seen from the fact that 94 percent of the laundries throughout the State were complying with the terms of the mandatory order in November, 1935; 58 percent were paying more than half their women and minor employees wages higher than the established minimum rates. The large number of laundries paying sums in excess of the minimum rates seems clearly to indicate that the wage ordered was reasonable and was not in excess of the value of the services performed.

The New York statute is utterly different from the one considered in the *Adkins* case, and contains the very provisions whose absence was condemned in that decision. There exist in New York State the social and economic conditions recognized by the Supreme Court as reasonable bases for a minimum wage statute but found to be lacking in that case.

With these differences between the statutes, and the facts underlying them, by the very reasoning in the Adkins case, a different result must be reached here.

It is of the essence of Anglo-American law and particularly of constitutional decisions thereunder that the Courts decide only specific cases, presented by specific records, and involving definite issues before the Court. This Court also does not decide general issues or pass upon all legislation of like character, or designed to meet similar conditions, when a specific example of such legislation, operating within a single jurisdiction and relating to specific facts, is involved in a case before it. It cannot be said that the United States Supreme Court in the

Adkins case holds that all minimum wage statutes, wherever found, are unconstitutional. On the contrary, the method of the District of Columbia statute was decried—but not its purpose. The purpose, in fact, was commended. (*Adkins* v. *Children's Hospital*, at p. 558.)

This canon of constitutional interpretation is particularly compelling when dealing with the broad language in the Fourteenth Amendment. The so-called "police power," which is the real issue in this case, raises, as the Courts have indicated again and again, ultimately pure questions of fact.

The Fourteenth Amendment has never been considered self-defining. It expresses a compromise between the liberty of the individual and the welfare of the people of the State. Every case under the Fourteenth Amendment presents an individual instance which varies with the facts.

Muller v. *Oregon*, 208 U. S. 412, 420, 421.

In *Nebbia* v. *People*, 291 U. S. 502, Justice ROBERTS, discussing the police power in relation to the Fourteenth Amendment, said:

> "It results that a regulation valid for one sort of business, or in given circumstances may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts."

See also *Radice* v. *New York*, 264 U. S. 292.

Compare *Block* v. *Hirsh* (256 U. S. 135) with *Chastleton* v. *Sinclair* (264 U. S. 543).

It is the appellant's contention in this case that the *Adkins* case passed on and purported to pass on only the legislation which was before it and the economic conditions upon which that legislation was founded. The *Adkins* case passed upon the District of Columbia statute in view

of the circumstances disclosed in regard to that statute, and did not consider nor purport to consider, and therefore did not pass upon, other minimum wage laws with different factual backgrounds. A different case and a different statute are now before this Court.

POINT III.

The delegation of powers to the Wage Board and to the Industrial Commissioner, as contained in the Minimum Wage Law, is a proper exercise of legislative authority.

Although the question as to the propriety of the delegation of legislative power to the Wage Board and to the Industrial Commission has not been raised by the writ of habeas corpus, it will nevertheless be dwelt upon briefly.

The problem of the extent to which legislative power may be delegated to administrative officers and bodies resolves itself into a consideration of the limits within which, in view of the increasing complexity of subject-matter, legislative bodies can practically determine administrative duties without impairing the efficient execution of a statute and without imposing too detailed a task upon themselves.

Trustees, etc. v. *Saratoga Gas Co.*, 191 N. Y. 123.

The delegation of legislative powers is declared valid where the Legislature has defined the general policy as far as is reasonably possible, and has left to the administrative body only the adaptation of such policy to varying local conditions or to peculiar exigencies with which the latter is better equipped to deal.

McKinley v. *United States*, 249 U. S. 397.
United States v. *Grimaud*, 220 U. S. 506.

United States v. *Chemical Foundation,* 272 U. S. 1.
Hampton v. *United States,* 276 U. S. 394.
Panama Refining Co. v. *Ryan,* 293 U. S. 388.

Especially in cases where contact with local conditions is requisite, such delegation is frequently declared valid.

State v. *Lange Canning Co.,* 164 Wis. 228.

In the case just cited, the legislative delegation of power to an administrative body to regulate the hours and working conditions of women employees was held proper.

In *Panama Refining Co.* v. *Ryan,* supra, Chief Justice HUGHES said:

> "The Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality which will enable it to perform its function in laying down policies and establishing standards while leaving to selected instrumentalities the making of subordinate rules within prescribed limits of the determination of powers to which the policy as declared by the legislature is to apply. Without capacity to give authorization of that sort, we should have the anomaly of a legislative power which in many circumstances calling for its assertion would be but a futility."

The Legislature, in the Minimum Wage Law, attempted to provide for the public welfare by securing a fair wage to women and minors in certain occupations, and the protection of industry from one source of unfair competition. This policy is clearly and unequivocably expressed (Sec. 550). The Legislature went further and established standards for carrying into effect their declared policy. Before the Wage Board may commence an inquiry into working conditions in certain industries, it must first be found that

a substantial number of the women and minors engaged in such an occupation are receiving oppressive and unreasonable wages, as defined in Section 551 of the statute.

The Wage Board can establish a wage only upon the application of the standards set forth in Section 551, subdivision 8, and Section 555. The limited powers of the Wage Board and of the Industrial Commissioner are clearly defined. Although the language of the statute is permissive in that the Commissioner and the Wage Board *may* take into account the type of evidence required by the Legislature, the Courts have construed this permissive language to be mandatory.

Dunham v. *Ottinger,* 243 N. Y. 423.

In that case, Chief Judge Hiscock said:

> "While the language of the statute confers upon him a permissive privilege to do these things there is no doubt that it imposes upon him the mandatory duty to perform them and thus protect the public" (p. 432).

It would be obviously impractical, if not impossible, for the Legislature to institute an investigation into the various industries in which women and minors are employed, and to establish minimum wage standards in each industry. To do so would be to "impair the efficient execution of the statute and to impose too detailed a task upon themselves." To safeguard against this, the Legislature has been definite and detailed in its adaptation of its legislative policy to the varying economic and industrial conditions and to the peculiar exigencies with which the Wage Board and the Industrial Commissioner are best equipped to deal.

POINT IV

The contention of the relator that the Minimum Wage Law is unconstitutional, in that it operates to compel him to be a witness against himself in a criminal case, is not relevant to the decision on this petition.

In order for the relator successfully to set up the constitutional right against self-incrimination, it is elementary that he must first show that he is affected by the particular provision.

In the first place, there is no showing in the relator's petition that the evidence by which the People have secured his indictment was secured in any illegal manner or by books and records obtained by reason of the provisions of the Minimum Wage Law. The indictment which charges the relator with the crime of forgery is certainly not governed by the provisions of law contained in the minimum wage statute.

Furthermore, the relator has made no showing that the evidence in the possession of the People has been illegally obtained or is being used against him.

The relator states in his petition that he was a *manager* of the Spotlight Laundry, in the County of Kings. If the books of the Spotlight Laundry were used as evidence against the relator, these books not being the relator's, he is not being compelled to be a witness against himself.

Aside from these considerations, Section 567 of the Minimum Wage Law provides that if any of the provisions of this Article are held invalid, the remainder of the Article shall not be affected thereby. The rules of statutory construction are that the invalidation of one part of a statute affects the other part only where the two are so interrelated that one cannot exist without the other.

It is apparent that the setting of a minimum wage standard is not affected by the requirement that certain books and records be kept and displayed. The statute would not fail of its purpose if these sections had been omitted.

POINT V

The statute being valid under the Fourteenth Amendment of the Constitution of the United States, the writ of habeas corpus should be dismissed and directions issued accordingly from this Honorable Court.

Respectfully submitted,

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